

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTOINE ROSS,

Plaintiff,

-v-

CAPTAIN DION WILLIS, et al.,

Defendants.

16 Civ. 6704 (PAE) (KNF)

ORDER

PAUL A. ENGELMAYER, District Judge:

A jury trial in this case is scheduled to begin on Tuesday, March 1, 2022. The Court has received a letter from Corporation Counsel seeking an adjournment of the trial, on the premise that plaintiff Antoine Ross, being unvaccinated, does not qualify for entry to this courthouse. *See* Dkt. 256; *see also* Dkt. 257 (letter response from plaintiff's counsel).

The Court denies this request, because its premise is incorrect. It remains to be seen whether Mr. Ross will qualify for entry into the courthouse under the protocols governing incarcerated trial participants. These presently require that the incarcerated trial participant have not tested positive within the past 10 days, have not had symptoms of COVID-19 within the past 10 days, have not had close contact with anyone who is symptomatic within the past 14 days, and that, each morning of proposed court entry, he test negative at the institution at which he is held. The Court's denial of the adjournment request is without prejudice to counsels' right to renew such a request in the event Mr. Ross later fails these entry requirements.

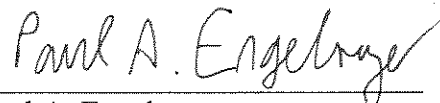
The Court notes that under the District's current protocols, Mr. Ross, if meeting the criteria for entry, will be required—in the same manner as an incarcerated criminal defendant who is not vaccinated—to be socially distanced from others in the courtroom consistent with the

District's applicable rules. If plaintiff's counsel intends for Mr. Ross to sit at the plaintiff's table, this will limit (likely to one) the number of other persons who may sit at that table.

To the extent that Corporation Counsel's letter states generally that members of its trial team have heightened health risks beyond those presented to the general public such that the socially distanced presence of an unvaccinated person in the courtroom would endanger them, the Court is open to receiving a declaration setting out these conditions and concerns with specificity. Such a declaration, given its nature, may be filed under seal. Counsel's general statement to this effect, however, is an inadequate basis to justify an adjournment of trial.

To the extent Corporation Counsel's letter continues to express pique at the determination by courthouse personnel that, based on her failure to meet the District's entry requirements applicable to non-incarcerated persons, a Corporation Counsel supervisory lawyer who had recently returned from international travel was properly prohibited from entry and thereby missed last Thursday's pretrial conference, the Court urges counsel to move on. Before enforcing these protocols, the Court's deputy confirmed with the District Executive's office that the supervisor failed these protocols and that her exclusion was mandatory. The Court's time, and presumably counsels', is not productively spent relitigating this determination.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: February 22, 2022
New York, New York